IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of	) Examiner: Misook Yu
Donald L. Durden	) Art Unit: 1642
Serial No. 10/712,850	) Ref: 1857-ARTI.0024-US-CON
Filed: November 13, 2003	)
For: "Compositions and Methods	)
for Identifying Agents which	)
Modulate PTEN Function and PI-3	)
Kinase Pathways"	)

TRAVERSAL AND REQUEST FOR

RECONSIDERATION OF REQUIREMENT FOR RESTRICTION

The requirement for restriction requirement under 35 U.S.C. §121 set forth in the Official Action dated September 27, 2006 has been carefully reviewed.

It is noted that a shortened statutory response period of one (1) month was set forth in the September 27, 2006, Official Action. Therefore, the initial due date for response was October 27, 2007. A petition for a four (4) month extension of time is presented with this response, which is being filed within the four (4) month response period.

It is the Examiner's position that claims 91-119 in the present application are drawn to two (2) patentably distinct inventions which are as follows:

Group I: Claims 91-114, drawn to a method of treating a cancer patient using a PTEN agonist.

Group II: Claims 115-119, drawn to a method of treating a cancer patient using a PTEN antagonist.

The Examiner asserts that Groups I an II are distinct and constitute separate inventions since the claimed methods use active ingredients with opposite functions (i.e., agonists and antagonists).

Applicant respectfully disagrees with the Examiner's position and submits that a withdrawal of the instant restriction requirement is clearly in order for the following reasons.

According to the MPEP §803.01, there are two criteria for restriction between inventions which are alleged to be patentably distinct: 1) the inventions must be independent and distinct as claimed and 2) there must be a serious burden on the Examiner if the restriction is not required. The Examiner contends that Groups I and II are unrelated, however, as stated in the MPEP §802.01: "The term 'independent' (i.e., unrelated) means that there is no disclosed relationship between the two or more inventions claimed, that is, they are unconnected in design, operation, or effect."

Despite the Examiner's assertion to the contrary, it is readily apparent from an objective reading of the inventions of Groups I and II that both groups are related because the methods will result in a similar effect (i.e., modulation of PTEN activity which is associated with the initiation of angiogenesis). In other words, both Groups I and II are methods for the treatment of cancer in a patient that involves PTEN signaling, and, therefore, do not comprise separate and distinct inventions.

The examination of Groups I and II together cannot be reasonably regarded as impose a serious search burden on the Examiner. Indeed, each of the groups of invention are directed to agents which modulate PTEN, and the Examiner's workload would not be unduly increased by searching the invention as presently claimed. It is clear that these two groups have a "disclosed relationship" as mandated by the MPEP, and since an equivalent search for cancer treatment that involves PTEN signaling is required for both groups, Applicant submits that the Examiner's search burden would not be unduly increased by searching Groups I and II together. Accordingly, Applicant requests that the restriction between Groups I and II be withdrawn.

In order to be fully responsive to the instant restriction requirement, Applicant hereby elects, with traverse, Group I, namely claims 91-114, drawn to a method of treating a cancer patient using a PTEN agonist. The Examiner has also required Applicant to elect a single chemotherapeutic agent from claims 94, 100 and 106 for examination purposes. Applicant hereby elects the species of etoposides. Claims 91-114 are readable on the elected species.

Applicant's elections in response to the present restriction requirement are without prejudice to their right to file one or more continuing applications, as provided in 35 U.S.C. §120, on the subject matter of any claims finally held withdrawn from consideration in this application.

Early and favorable action on the merits of this application is respectfully solicited.

Respectfully submitted,
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